

21 C.J.S. Courts § 346

Corpus Juris Secundum | May 2023 Update

Courts

M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Amy G. Gore, J.D., of the staff of the National Legal Research Group, Inc; and Lonnie E. Griffith, Jr., J.D.


X. Clerks of Courts

E. Deputies and Assistants

§ 346. Term of office; removal

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Clerks of Courts](#)  6

If a statute providing for the appointment of deputy or assistant court clerks fails to specify the term of office, they hold only during good behavior or at the pleasure of the appointing official who, in turn, has the right of removal.

If a statute providing for the appointment of deputy or assistant clerks of court fails to define the term of office, they hold only during good behavior¹ or at the pleasure of the appointing power.²

The right to remove a deputy or assistant court clerk generally belongs to the appointing official or statutorily appointed governing body.³ Where the court clerk has the authority to hire deputies, the judge has no authority to interfere with clerk's statutory duty to hire or fire the deputies.⁴ However, under a constitutional provision providing that officers and employees of a court are to be appointed and may be removed by the court, a deputy clerk may not be fired without the consent of the judge.⁵

An assistant court clerk has a constitutional right to notice and an opportunity to respond, for purposes of the clerk's federal civil rights claim alleging that the clerk's due process rights were violated when the clerk was selected for layoff without being given an opportunity to contest the layoff, where the clerk's job performance plays a role in the selection for layoff.⁶

A state statute making a county clerk's office liable civilly or criminally for acts or omissions of deputy clerks and providing that ministerial officers may act through their deputies does not indicate an intent to treat deputy clerk positions as political jobs subject to patronage dismissal.⁷

Footnotes

- 1 Mo.—Horstman v. Adamson, 101 Mo. App. 119, 74 S.W. 398 (1903).
- 2 Mont.—Conboy v. State, 214 Mont. 492, 693 P.2d 547 (1985).
- W. Va.—State ex rel. Core v. Merrifield, 202 W. Va. 100, 502 S.E.2d 197 (1998).
- At will termination limited by whistleblower statute**
Although a deputy clerk may be an at will employee, a wrongful discharge claim may still be viable under a whistleblower statute.
- Okla.—Vasek v. Board of County Com'rs of Noble County, 2008 OK 35, 186 P.3d 928 (Okla. 2008).
- 3 N.Y.—Dickinson v. New York State Unified Court System, 99 A.D.3d 569, 952 N.Y.S.2d 189 (1st Dep't 2012).
- Mo.—Horstman v. Adamson, 101 Mo. App. 119, 74 S.W. 398 (1903).
- Pa.—Seltzer v. Fertig, 237 Pa. 514, 85 A. 869 (1912).
- 4 Fla.—Morse v. Moxley, 691 So. 2d 504 (Fla. 5th DCA 1997).
- Okla.—Petuskey v. Cannon, 1987 OK 74, 742 P.2d 1117 (Okla. 1987).
- 5 W. Va.—State ex rel. Core v. Merrifield, 202 W. Va. 100, 502 S.E.2d 197 (1998).
- 6 U.S.—Whalen v. Massachusetts Trial Court, 397 F.3d 19 (1st Cir. 2005).
- 7 U.S.—Caudill v. Hollan, 431 F.3d 900, 2005 FED App. 0472P (6th Cir. 2005).

End of Document

© 2023 Thomson Reuters. No claim to original U.S. Government Works.